

Governor Vetoes Bill to Establish Scope of Practice for Sleep Techs, Board Enforcement

On September 27, 2008, SB 1526 was unexpectedly vetoed by Governor Arnold Schwarzenegger redirecting the course of events for the Respiratory Care Board. SB 1526 proposed to establish a system requiring all sleep testing personnel to be registered with the State. Consistent with the Governor's veto, the Board is expanding its enforcement activities to uphold its mandate to prevent the unqualified and/or unlicensed practice of respiratory care.

Governor Schwarzenegger vetoed SB 1526 (D-Perata) following the longest budget stalemate in history. The Governor stated the following in his veto message: "The historic delay in passing the 2008-2009 State Budget has forced me to prioritize the bills sent to my desk at the end of the year's legislative session. Given the delay, I am only signing bills that are the highest priority for California. This bill does not meet that standard and I cannot sign it at this time."

SB 1526 had proposed to further consumer protection by establishing a registration system for Polysomnography Technicians and included provisions for competency testing, education requirements, and supervision. It also would have required criminal background checks for all sleep testing personnel thereby, eliminating or greatly reducing the criminal activity that has occurred in recent years. By providing a mechanism to deny or revoke privileges, SB 1526 would have provided safeguards for consumers and reduced costs associated with unreliable testing.

Initially, the Board sponsored a separate piece of legislation, but it was superseded by SB 1526, sponsored by the sleep associations, which instead gave the Medical Board of California the authority to enforce the registration system. The Board was opposed to SB 1526 as originally introduced. However, in the end, after working with the author and the sponsor for amendments, the Respiratory Care Board was in strong support of this legislation. Most importantly, the legislation would have prevented a shortage of workers, while ensuring competency – especially as it related to respiratory care – and criminal background checks.

The Board acknowledges and respects the efforts of Senator Perata, the Medical Board of California, the California Thoracic Society, the California Sleep Association, the California Society for Respiratory Care and the American Association for Respiratory Care for working with our Board, and getting a final piece of legislation that worked for everyone.

Throughout the Board's review of this emerging practice and more recently this legislative process, pending the outcome of this bill, the Board limited its enforcement activity against the unlicensed practice of respiratory care as it relates to polysomnography. However, in light of the Governor's veto, the Board has no reasonable alternative but to begin fully enforcing existing law.

Tasks that are considered respiratory care that are commonly associated with polysomnography include, but are not limited to, all of the following:

- * The diagnostic and therapeutic use of oxygen.
- * Noninvasive ventilatory assistance of spontaneously breathing patients and cardiopulmonary resuscitation.
- * Establishment of baseline oxyhemoglobin saturation.
- * Routine fitting of positive airway pressure mask or cannula.
- * Maintenance of nasal and oral airways that do not extend into the trachea.
- * Continuous observation, analysis and recording of carbon dioxide concentrations in respiratory gases, and other respiratory events.
- * Validation of respiratory-related data integrity
- * Calibration of respiratory care devices
- * Implementing appropriate interventions, including actions necessary for patient safety.
- * Applying the knowledge and skills necessary to recognize and provide age specific respiratory care in the treatment, assessment, and education of neonatal, pediatric, adolescent, adult, and geriatric patients.

Effective immediately, the Board will revitalize its investigations and enforcement of the unlicensed practice of respiratory care as it relates to polysomnography as identified above. The Board understands that major personnel shifts will need to occur for many, though not all, sleep testing organizations. Employers using RPSGT credentialed personnel may consider shifting their duties to focus directly on all sleep diagnostic testing and treatment (as applicable) that are not associated with respiratory care. Respiratory diagnostic testing for Obstructive Sleep Apnea and treatment via therapeutic interventions requiring positive airway pressure must be performed by a licensed respiratory care practitioner pursuant to the Respiratory Care Practice Act. To avoid legal penalties and/or discipline it is imperative that each organization begin making the necessary changes, as applicable, immediately.

If you have any questions, please contact the Board directly.